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October 21, 1981

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Dear Sam:

Our office has reviewed the 10-6-81 draft letter to Dr. Brandt and the draft TI background statement on substances used in cigarette manufacture. We see no substantial smoking and health litigation problems in the letter to Dr. Brandt. We do note that in the second sentence of the third paragraph a statement is made concerning "the flavorings used in American cigarettes". The other two sentences in that paragraph specifically refer to "flavorings or other substances". Was the omission of any reference to substances other than flavoring in the second sentence intentional? If so, perhaps the paragraph should be reworded to avoid highlighting the omission.

The letter is written as though American will participate in the procedure outlined. If not, it appears the letter should be revised.

The procedures involving the access of government officials to the list prepared by Covington & Burling are very limiting. We have no quarrel with this approach, so long as those involved in direct contact with department officials do not feel that there is a significant risk that a breakdown in negotiations could be provoked. Perhaps the industry's willingness to negotiate further should be emphasized at the time this letter is sent or delivered.

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Consider adding some language in paragraph six of the letter to insure that the department is required to pursue any available appellate remedies prior to submitting to a court order.

In regard to the TI background statement, we have only one substantial smoking and health litigation problem. That concern relates to the first sentence in the third paragraph on page one. When we compared the sentence to a similar one in the "final" March 13, 1981, version of the statement, we noticed one significant change: the omission of the word "substantial" before the phrase "scientific evidence". This omission makes the sentence inaccurate. The sentence should be changed to read as follows: "The cigarette manufacturers that are members of the Tobacco Institute are not aware of any convincing scientific evidence that the flavorings in American cigarettes involve any hazard to health." This makes the sentence correspond more closely with the second sentence in paragraph three of the letter to Dr. Brandt.

We do not object, on smoking and health grounds, to the other changes in the latest draft of the statement. However, we do note that the sentence that begins on page one and ends on page two is somewhat repetitive of the first sentence on page three.

I will look forward to seeing you on the 29th.

Best regards,

Yours truly,


Robert E. Northrip

REN:pk

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